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May 5, 2022

BY ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *N.L., individually and on behalf of M.C. v. New York City Department of Education*, 21-cv-11215 (LGS)

Dear Judge Schofield:

I am the Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, assigned to represent Defendant New York City Department of Education (“Department of Education”) in the above-referenced action. I write pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure and Rule I-D-3 of Your Honor’s Individual Rules and Procedures for Civil Cases to respectfully request leave to file the Record under seal.¹ Plaintiff’s counsel joins in this request.

The Record contains several types of information that should be shielded from public view. The hearing transcripts, exhibits, and medical and educational records that comprise a large portion of the Record are replete with pedigree information of the minor student, M.C. (the “Student”), on whose behalf Plaintiff filed this action. Much of this information concerns the Student’s disabling condition and her corresponding educational needs, information that is both sensitive and private. Accordingly, this information must be shielded from public view pursuant to the Rule 5.2(a) of the Federal Rules of Civil Procedure, the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, and the Family Educational Rights and Privacy Act (“FERPA”), 34 C.F.R. § 99.3 (defining personally identifiable information under FERPA).

¹ Consistent with the Court’s Order, dated March 29, 2022 (Dkt. No. 11), the parties have Bates-stamped the Record and will cite to it in their joint statement of facts.

Moreover, as the underlying administrative proceeding is presumptively closed to the public, all documents recounting the proceeding should themselves be deemed confidential. *See* 34 C.F.R. § 300.512(c)(2) (permitting parents to choose whether a hearing is open or closed to the public). Indeed, “[C]ourts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs.” *L.B. v. New York City Dept of Ed*, 15-CV-3176, 2015 U.S. Dist. LEXIS 127081, at *2 (S.D.N.Y. Sept. 22, 2015) (citations omitted).

Finally, redacting protected information from the Record would be burdensome and would not sufficiently safeguard the Student’s privacy interests. As to the burden, the Record contains a wide variety of materials spanning more than 50 individual records and 792 pages. As to the Student’s privacy interests, even if personally identifiable information were redacted, it is possible that remaining visible information linkable to the Student would allow a “reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.” *See Matter of Huseman v. New York City Dept. of Educ.*, 2016 N.Y. Misc. LEXIS 1951, at * 11 (Sup. Ct. N.Y. Co. May 25, 2016) (quoting 34 C.F.R. § 99.3).

For the reasons discussed above, the parties jointly respectfully request leave to file the Record under seal.

Thank you for your consideration of this matter.


Respectfully,

/s/ _____
Darian Alexander
Assistant Corporation Counsel

CC: BY ECF
all counsel of record

The parties' sealing application is **GRANTED** for substantially the reasons stated in the joint letter. The materials at Dkt. No. 19 shall be sealed with access limited to the parties listed in the appendix at page 3. The Clerk of Court is respectfully directed to close the motion at Dkt. No. 18.

Dated: May 10, 2022
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

APPENDIX

The following parties should have access to the sealed administrative record (the “Record”) underlying the matter of *N.L., individually and on behalf of M.C. v. New York City Department of Education*, 21-cv-11215 (LGS):

Benjamin Kopp
Attorney for Plaintiff

Darian Alexander
Attorney for Defendant